IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL
Criminal Application No. 373 of 2006

1. Bhedi Ram and 5 others … Applicants

Versus

1. Special Judicial Magistrate-IInd Dehradun
2. Vinay Kumar S/o Sri J. Ram
   R/o Vikas Nagar,
   District - Dehradun

With

Criminal Application No. 374 of 2006

1. Durga Prasad and 5 others ….. Applicants

Versus

1. Special Judicial Magistrate-IInd Dehradun
2. Vinay Kumar S/o Sri J. Ram
   R/o Vikas Nagar,
   District - Dehradun ….. Respondents

Sri D.S. Mehta and Sri V.S. Pal, learned counsel for the applicants.
Sri Amit Bhatt, learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

1. These two petitions u/s 482 Cr.P.C. have been filed to quash the summoning order dated 20.02.2006 passed by Special Judicial Magistrate-II, Dehradun in Complaint Case No. 2201 of 2005 and 2203 of 2005 u/s 323, 504, 506 I.P.C.

2. Brief facts for the disposal of petition No. 373 of 2006 are that a complaint was filed by the respondent No. 2 before the learned Special Judicial Magistrate, Dehradun u/s 323, 504, 506 I.P.C. against the applicants alleging therein that the complainant had a Fast Food (Chaumin) Stall in Vikas Nagar. The applicants came to his stall on 04.12.2005 at about 6:00 Pm. and they took the chaumin from him and the applicants were taking with each other by indicating by their names and they belong to Mathura. Thereafter, the applicants demanded the glasses for taking liquor from the complainant and the complaint refused to provide the glass to take liquor. Consequently, they became annoyed and hurled the abuse and

slapped him and threatened for dire consequences. When they were leaving the stall, some papers left in which their names and address were found on those papers Thereafter, the complainant filed this complaint on the next date. The complainant produced himself u/s 200 Cr.P.C. and one witness Pradeep as PW2 and other witness Anil Singh as PW3 u/s 202 Cr.P.C. Thereafter, the Magistrate had taken the cognizance against the present applicants.

3. A similar complaint has been filed in Petition No. 374/2006 by the respondent No. 2 against the applicants alleging therein that on 05.12.2005 at about 8:00 pm. the applicants took the chaumin from him and they were talking with each other by indicating their names and they belong to Mathura. The applicants has stated to the complainant that the complainant had lodged the report against Bhedi Ram, Murlidhar and others and they would kill him. It was also stated by them that their papers and Rs. 500/- fell from their pocket and they demanded the complainant to return the same. The complainant stated that he could not receive Rs. 500/-. After hearing from the complainant this fact, they again slapped the complainant. When Anil reached at the spot, the applicants left the spot. Thereafter, the evidence u/s 200 and 202 Cr.P.C. were recorded and the accused-applicants were summoned.

4. I have heard the learned counsel for the parties and perused the record.

5. It was contended that there was a dispute with regard to the Dharmsala and a civil suit is pending before the competent court at Mathura and the applicants are the tenants of the Dharmsala situated at Mathura and the landlord had got filed a frivolous complaints. It was further contended that a similar complaint has also been filed in Saharanpur which had been stayed by the Allahabad High Court. It

was further contended that the present petitions are vexations and malice. Perusal of the record reveals that the complaint which has been filed before the learned Magistrate is containing the similar allegations in both the complaints. The learned Magistrate had not inquired about the veracity of the complaint and the complainant itself. In **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705** wherein it has been held as under :-

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

The above proposition of law clearly emphasizes that the Magistrate, while taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant. In the instant case, the learned Magistrate had not put any question to verify the veracity of the facts narrated in the evidence. It was obligatory on the part of the learned Magistrate to

put certain questions to verify the veracity of the facts and circumstances in the instant case. So many documents have been filed before this court showing that there was litigation in between the parties in different courts. The Magistrate is directed to put the question to the complainant with regard to those litigations. It was further mentioned in the petition that one Neeraj Jain and Naresh Jain also filed a complaint case through complainant Mohd. Irfan at District Saharanpur against the applicants No. 1 and others before the court of learned Chief Judicial Magistrate, Saharanpur in Case No. 85425/2005 u/s 323, 452, 504, 506 I.P.C. The proceedings in that case had been stayed by the Allahabad High Court. It has further been alleged in the petition that a civil suit with regard to the dharamsala is pending in the court of Mathura bearing O.S. No. 319 of 2006. The learned Magistrate will put the question with regard to these litigations pending in the different courts and thereafter test the veracity of the complaint.

6. In view of the above, the cognizance order is liable to be set aside. The petition is allowed and the cognizance order dated 20.02.2006 passed by Special Judicial Magistrate-II, Dehradun in Complaint Case No. 2201 of 20005 and 2203 of 2005 are set aside. The Magistrate is directed to hold a fresh inquiry u/s 200 and 202 Cr.P.C. in the light of the observation made above and thereafter pass an appropriate order in both the complaints.

7. The petition is disposed of accordingly.

8. All applications pending in this case are stand disposed of in terms of the judgment.

(J. C. S. Rawat, J.)

6th June, 2006
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